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JOSEPH F. SPANIOLO, J.
CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

ALUMINUM COMPANY OF AMERICA,

Petitioner,

—v.—

DAVID SLIMAN and CAROLYN SLIMAN,

Respondents.

**REPLY BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE
STATE OF IDAHO**

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Respondents' brief addresses the standards which determine whether a judicial decision awarding *compensatory* damages will be applied retroactively. This analysis would be apposite if Alcoa had contended that it could not be liable for compensatory *or* punitive damages for failure to meet its newly enunciated duty to warn. Alcoa has not done so.¹

As Alcoa's petition demonstrates, and this Court has recognized, special due process concerns are implicated when a person is *punished* for failure to meet a legal duty that did not

¹ As discussed in Point II of its petition, Alcoa is entitled to retrial before a jury that has been charged under the standard enunciated by the Idaho Supreme Court. While Alcoa would hope to establish that it met that standard, if it does not, it recognizes that it would be liable to respondents for compensatory damages.

exist when the challenged conduct occurred. Respondents totally ignore the distinction between punishment, such as occurred here, and the award of compensatory damages. This Court has recognized that the issue of whether punitive damages may be retrospectively imposed under a new cause of action is one that "must be resolved." *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. ___, 106 S. Ct. 1580, 1589 (1986). This is the case in which to do so.

Respectfully submitted,

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